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ABSTRACT

This document is a model state statute to provide educational entitlements for students at risk of school failure. The statute is predicated on the conviction that children coming from the most impoverished circumstances have the ability to learn and succeed. It is also based on the belief that legislators have a pivotal role to play in establishing a legal framework for successful public education. Part One is a preamble that presents the findings that demonstrate the need for special attention to this population. It also states the legislative objective--to enable each child to graduate from high school and to become a productive, responsible citizen. Part Two calls for pre-school child development programs for young children who are at risk, especially low-income children who have limited English proficiency. Part Three defines the concept of "at risk" for children at various stages. There is a call for flexibility so that the programs may include assistance to children who are not from low-income families but who perform poorly. Part Four establishes an entitlement for dropouts. Programs are specified which can be provided in the public schools or in alternative settings. Part Five specifies measures for implementation, enforcement, and administration of the statute. (VM)

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ELEMENTS OF A MODEL STATE STATUTE TO PROVIDE EDUCATIONAL ENTITLEMENTS FOR AT-RISK STUDENTS

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ELEMENTS OF A MODEL STATE STATUTE TO PROVIDE EDUCATIONAL ENTITLEMENTS FOR AT-RISK STUDENTS

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CHIEF STATE SCHOOL OFFICERS

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ELEMENTS OF A MODEL STATE STATUTE TO PROVIDE EDUCATIONAL ENTITLEMENTS FOR AT-RISK STUDENTS

INTRODUCTION

At the annual meeting of the Council of Chief State School Officers in Asheville, North Carolina, in November 1987, the Council approved a policy statement, "Assuring School Success for Students At Risk." The policy statement refers to a model state statute prepared as one example for implementing the policy statement. The model statute which follows was not placed before the Council for approval or endorsement.

This draft of a model state statute is designed to provide effective assistance to students who are at-risk of school failure. The statute is predicated upon the conviction that children coming from the most impoverished circumstances have the ability to learn and to succeed. It is also based upon the belief that state legislators have a pivotal role to play in establishing a legal framework for successful public education.

Part I of the model statute sets forward in the form of legislative findings some of the facts that give rise to nationwide concern about children left behind in public school systems. It also states the legislative objective — to provide each child with educational and related services calculated to enable that child to complete high school successfully and to become a productive and responsible citizen.

Part II calls for pre-school child development programs to be made available to 3- and 4-year-old children who are at-risk of educational failure. These are defined as low-income children and children who do not speak or comprehend the English language.

Part III first defines the concept of "at-riskness" for children at various stages of their public school careers (in grades K-12). At the earlier stages the definition is largely income based, later it moves to school performance. Flexibility is built in by enabling school officials to identify students who are in need of assistance even though they are not low-income or performing poorly.

The broad entitlement of the model statute is for all children, but special measures are called for in Part III for students at-risk of educational failure. They are of three kinds:

(1) *Promising Practices* — that schools follow practices with regard to employment of teachers, instructional strategies, textbooks, facilities, parent involvement that are generally regarded as necessary for successful education. Those may be regarded as *input* measures.

(2) *Environment for Successful Education* — to ensure students such an environment this section builds *choice* into public education by permitting at-risk students to transfer out of schools that do not provide an environment for successful education into other schools that do. The criterion for such an environment is the proportion of students in the school who are meeting a standard of adequate performance. In that sense, this section may be read as having an *output* measure.

(3) *Individual and School Plans* — this section is designed to impel attention to the individual needs of students who are at-risk and to identify their needs for educational and related services. It is also designed to establish a process for identifying system failures in particular schools. It is a *process*-related measure.

Part IV of the model statute establishes an entitlement for young people who have dropped out of school and are beyond the age of compulsory attendance (generally those 16 through 20) to re-enroll in school. State and local education agencies are called upon to develop educational programs geared to the needs of these re-enrolling students, programs which may be provided in the public schools or in alternative settings.

Part V specifies measures for implementation and enforcement, including data collection, monitoring, technical assistance, fiscal incentives and administrative and court remedies. It also calls upon state departments and agencies that perform functions related to the purposes of the model statute to cooperate with the State Education Agency. While the entitlements specified in the statute are legal in nature, the remedies provided are designed to secure compliance without lengthy litigation. Flexibility is built-in, e.g., in the call for use of alternative forms of dispute resolution. Nevertheless, state agencies would be empowered to take strong measures in cases of persistent noncompliance. Here, as elsewhere in the statute, provisions are modeled after experience in the states.

PART I

PREAMBLE — LEGISLATIVE GOALS

Suggested Language

The purpose of this statute is:

(1) *"to provide each child with educational and related services reasonably calculated to enable the child to achieve his or her potential, to become a productive member of society and to undertake the responsibilities of citizenship."*

Alternative Language

The purpose of this statute is:

(2) *"to provide each child with educational and related services reasonably calculated to lead to successful completion of a high school education," or*

(3) *"to assure that each child at risk of educational failure is provided at the earliest possible time with educational and related services that are geared to his or her specific needs and that are reasonably calculated to lead to successful completion of a high school education."*

(4) *"to provide each child with educational and related services reasonably calculated to lead to successful completion of a high school education so that the child may fulfill his or her potential, become a productive member of society and undertake the responsibilities of citizenship."*

Comment: The major purpose of stating legislative goals is to set the tone for what follows. The preamble also may be of help in resolving questions of legislative interpretation that arise in the body of the statute.[1]

The alternative formulations above contain some differences of emphasis or nuance. For example, (1) differs from (3) in that it is stated in terms of the rights of all children while (3) is targeted to children who are defined as "at-risk." While the operative effect is the same, (1) may be preferable because its terms are inclusive and it does not appear as "special interest" legislation.

In addition, (1) differs from (2) in that it states an expansive definition of the ultimate goal, rather than the more limited formulation of "successful completion of a high school education." Alternative (4) combines (1) and (2).

All of the phrases used are broad and imprecise. "Successful completion of a high school education" in many states may have a gloss given to it by state education codes or regulations. But one reason for preferring the more expansive definition in (1) is that many holders of high school diplomas, who are deemed to have "successfully completed" their education nonetheless lack basic skills.

It is important to note that under all formulations, the entitlement is not to an end product but to "educational and related services" calculated to reach the goal.

There are other possible types of formulations of goals that are not presented above. For example, one could state things much more narrowly and in negative terms — that the object is to lower dropout rates and other manifestations of school failure. While that may be a pragmatic approach in some states, it does not do real justice to the objective here. At the other end of the spectrum, one could state the goal in a more results-oriented way — e.g., "to assure that children attending public schools secure the skills necessary for them to become productive members of society . . ." That kind of statement is less geared to "inputs," i.e., services calculated to produce the result than to the result itself. While it may do more to convey the notion of an entitlement, it will not ultimately be helpful. It probably would spur the filing of more damage actions against school systems by parents of students who did not acheive functional literacy. In any event, the specific entitlements must be stated in the body of the statute.

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[1]A spirited discussion has taken place over the years about the weight to be given to preamble language. In an early English case, Justice Dyer said that ". . . the preamble of the act is to be considered . . . a key to open the minds of the makers of the act, and the mischief which they intended to redress" Stowel v. Lord Zorich, 1 Plowden 353, 369, 75 Eng. Rep. 536 (1569). While U.S. cases are more restrained in their view of preambles, they do regard preamble language as an aid to defining legislative intent. See, e.g., Beard v. Rowlan, 34 U.S. 301, 317 (1835).

Preamble — Legislative Findings

Comment: Findings in legislation provide a means for the chief sponsors of a bill to state the case for the bill in the terms they believe will be most compelling to their colleagues and to the public. There also are some instances in which legislative findings may serve a more important role, e.g., in defending legislation against constitutional attack.[2]

It is suggested that the model statute contain a sample of findings of various kinds from which legislators may choose. They would include the following:

A. **Objective description of conditions that give rise to the legislation.**

Ex 1. *"Public school systems face a formidable and continuing challenge in meeting the educational needs of children at risk of school failure:*

(a) *One child in four under the age of six in the United States lives below the poverty line.*

(b) *Nearly 60 percent of children born in 1983 will live with only one parent before the age of eighteen; 90 percent of these children will live in female-headed households; a majority of these households will have incomes under $10,000.*

(c) *Increasing numbers of children whose parents have migrated from other nations enter the public schools without proficiency in the English language.*

Unless steps are taken to address their educational needs, the risks of school failure for children living in the conditions described are very high."

Ex 2. *"Despite progress that public school systems have made the rates of school failure remain extremely high:*

(a) *More than one quarter of the nation's youth do not finish high school. Many who do graduate and enroll in post-secondary institutions are in need of remedial reading and writing courses.*

(b) *Nearly 13 percent of seventeen-year-old students still enrolled in school are functionally illiterate. Among students who drop out, about 60 percent are functionally illiterate."*[3]

B. **Findings about harm to the individual, state and nation that flows from allowing high rates of school failure to persist.**

Ex 1. *"Failure to address effectively the basic skill deficiencies and high dropout rates of at-risk children will severely limit this state's productive capacity, economic growth and potential . . ."*

C. **Positive findings about the importance of educational initiatives directed toward children at-risk to their full development as individuals and to the economic health and well-being of the state and the nation.**

D. **Findings establishing linkage or causation between measures contained in the model legislation and school success.**

Ex 1. *"Research and experience have shown that children at-risk of school failure derive short and long term benefits from pre-school programs"*

Ex 2. *"Research and experience have shown that an environment for the successful education of all students is more likely to be established at public schools that avoid large concentrations of poverty and other factors that place children at risk."*

Ex 3. *"Research and experience have shown that children succeed in schools that have appropriately certified and trained staff; that adopt and pursue systematic instructional strategies; that use appropriate and up-to-date text books, materials and equipment; that conduct education programs in facilities that are clean and safe, that involve parents in all facets of their child's education and that are offered the opportunity and flexibility to do their own planning and setting of goals. There exists a pressing need to establish these conditions for successful education at many more public schools."*

Ex 4. *"Plans that address the needs of individual children and plans that address systemic problems within a school can prove useful means of improving school performance."*

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[2]For example, a race conscious, affirmative action statute may better be defended against a constitutional challenge if there is a legislative finding that racial discrimination existed in the past and that the statute's remedies are needed to eliminate the vestiges of such discrimination.

[3]State legislators may want to substitute statewide figures, if available, for national statistics.

PART II

ENTITLEMENT TO PARTICIPATION IN CHILD DEVELOPMENT PROGRAM

A. **Entitlement**

Suggested Language

"Each school district shall make available to all pre-school children within its jurisdiction who are at-risk of school failure the opportunity to participate in a child development program of at least one half day's duration that is reasonably calculated to provide preparation for successful participation in public schools."

B. **Eligibility**

Suggested Language

1. *"A child shall be deemed at risk of school failure and eligible to participate under Section A if:*
   (a) *he or she is member of a household or family whose income is at or below the poverty level under criteria used by the Bureau of the Census in compiling the most recent decennial census, or*
   (b) *he or she is unable to speak or comprehend the English language."*
2. *"A child who is at-risk of school failure under B(1) shall be eligible to participate in the program if the child will reach his or her third or fourth birthday in the school year in which the program is offered."*

Comment on Entitlement and Eligibility: There are a number of things to note. First, the obligation is placed on each school district to make available a child development program. Second, participation by parents is voluntary. Third, no exception is made for school districts (as is the case under some statutes) which have only minimal numbers of students who fit the definition of "at-risk". Note that the district's obligation is to "make available" a program, not necessarily to operate one. A district with a minimal number of students may fulfill its obligation by contracting with a private agency, provided the private agency meets standards to be prescribed later in the model statute and in regulations promulgated by the State Education Agency. There is no reason why children who otherwise would qualify should be excluded because they are in a small minority.

The eligibility criteria are more thorny. The prime standard — being a child of poverty — is drawn from the Texas statute. The main difference is that the Texas law would have the poverty or subsistence level defined by the State Education Agency, while the model statute provides for use of Census Bureau criteria. The latter is based on the formulation used in the ECIA (Chapter 1). The problem with state-drawn standards of poverty is that many will yield to the temptation to set the standard to fit available resources. On the other hand, if a federal standard is used, an appropriate technique may be needed for adjusting for regional differences in the cost of living.

The second criterion — English language deficiency — also is drawn from the Texas statute. It describes a widespread condition which is not completely correlated with poverty (since many new immigrant families are not poor) and which is widely regarded as a significant indicator of potential school failure.[4]

An alternative formulation would be to base eligibility in whole or in part on "predicted failures in school readiness," an approach that has been used in some states. This approach is not favored, however, because of concerns about the reliability of methods of determining school readiness. A statewide testing program to ascertain the school readiness of 3- and 4-year-olds runs the risk of labelling children. Even if participation is voluntary, the risks outweigh the value of such tests as a diagnostic tool.

Another way to go in setting eligibility standards would be to try to identify other characteristics of at-riskness that are appropriate for young children. Or one could add to poverty other socio-economic charac-

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[4]English language deficiencies of course may arise not only from foreign birth but also from disabling conditions. Although they are clearly "at-risk," handicapped children are not included in this Title or in other sections of the model state statute because a comprehensive set of entitlements for them is contained in federal law (P.L. 94-142). As to this Title, PL 94-142 as amended calls for the provision of similar services to pre-school handicapped children by 1992. PL 99-457, enacted in October 8, 1986, authorizes pre-school grants to serve handicapped children aged 3 to 5. According to the House Committee report, states currently are serving more than 75 percent of all handicapped children aged 3 to 5, and with the new federal grant the Committee expects that *all* eligible children will be served by 1991-92.

teristics such as the level of education of parents, "e.g., children from families without a parent or guardian who completed high school." While the latter standard (along with others) may be a good predictor of potential school failure, the danger of listing multiple criteria is to make the statute too complex and, in the process, to omit inadvertently other criteria that may be important.

One other important issue of eligibility is whether children who are not at-risk should be eligible to participate in child development programs. The advantages of such broad participation are numerous. If child development programs come to be regarded as an integral part of public education, the removal of restrictions on eligibility would be consonant with the broad purpose of the model statute to provide a basic educational entitlement to all children.

Furthermore, the experience of the Head Start program, which reserves some slots for children who are not income-eligible, strongly suggests that broad participation is important in avoiding socio-economic and racial isolation and in reaping the educational benefits of integration at an early age.

Despite these important factors weighing in favor of universal participation, considerations of cost and practicality led to a decision to restrict eligibility initially to children deemed at-risk, i.e., mainly children in poverty. The needs of these children are so great that it would be inadvisable for states to defer action while seeking to secure the financial resources for a universal program.[5]

A compromise approach would be to model the statute after Chapter 1 and establish child development programs in schools that are Chapter 1-eligible. The advantage would be to create programs in which there is at least some socio-economic diversity. But disadvantages would flow from the abandonment of the child-based eligibility approach that is used elsewhere throughout this model statute in favor of an approach based on school characteristics. The principal problems are those of need and equity. If minimum numbers of poor children in a particular school would be needed to establish a program, some significant number of at-risk children would not be served.[6]

Accordingly, it is recommended that states move in stages to establish a child development program, acting first to make such a program available to children most in need and then, as rapidly as resources can be secured, extending the benefits to all 3- and 4-year-olds.

C. Content and Implementation

Suggested Language

1. *"The State Education Agency shall promulgate regulations to govern the implementation of child development programs by local education agencies. The agency shall set standards in the following areas:*
   (a) *Programs appropriate for the 3- and 4-year-old children enrolled in the program. Programs shall emphasize language, communication and social skills which are developmentally appropriate for 3- and 4-year-olds and which are important to successful participation in kindergarten and grade one educational programs,*
   (b) *Methods to facilitate the involvement of parents, including outreach to assure dissemination of information about the program and assistance to parents in working with their children at home,*
   (c) *Appropriate child-to-staff ratios and group sizes,*
   (d) *Appointment and in-service training of teachers and para-professionals with appropriate qualifications in child development,*
   (e) *Access without cost to transportation appropriate for this age group, and*
   (f) *Coordination with other public and private human service agencies to assure diagnoses and treatment of conditions that place children at-risk of school failure."*
2. *"The standards promulgated by the State Education Agency under Section C1 shall also apply to any other private or public agency which conducts a child development program pursuant to this Part*

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[5]It is clear that programs involving the participation of all 3- and 4-year-olds would be costly. Currently, participation in existing child development programs is determined largely by ability to pay. In families with incomes of less than $10,000, fewer than one 3-year-old in five and fewer than two 4-year-olds in five are enrolled in preschool programs. As family income increases significantly larger proportions of children in these age groups are enrolled in such programs.

[6]Another "compromise" approach might be to make eligibility for child development programs universal but to establish a fee schedule for parents able to afford it. Such an approach could set an undesirable precedent for chipping away at the basic precept of a "free public education." A variation on this approach would be to make poverty the prime determinant of eligibility but to make a limited number of seats available to children who are not income-eligible and whose parents are willing to pay a fee. (Under Head Start, 10 percent of the slots are available to such children.) Such an approach might be justified as an interim measure leading to universal participation.

under contract with a local education agency. The State Education Agency shall promulgate such additional standards governing agencies that conduct child development programs under contract with local education agencies as the SEA deems necessary and appropriate to assure the health, safety, and well-being of children participating in the program."

Comment on Content and Implementation: The second sentence of Subsection (a) represents an effort to provide general guidance on the type of pre-school development program we sought. On the one hand, the legislation is not intended to use public education funds to establish statewide day care facilities. On the other, it is not intended to cram children full of information at an early age. Rather, the program should be designed to provide readiness skills that most middle class children have acquired by the time they enter school but which many low-income children lack.[7]

Subsection (c) calls for appropriate staffing ratios. A 1986 report of the Early Childhood Education Commission of the City of New York suggests class sizes of no more than 20 children with two adults.

Subsection (e) calls for provision of free transportation. This contrasts with the Texas statute which specifically disavows an obligation to provide transportation. Most other statutes appear to be silent on the subject. Free transportation would appear to be essential if the notion of entitlement is to have meaning.

Subsection (f) calls for standards on coordination with other public and private human service agencies. Such coordination should help to assure that health and nutrition problems that often impede successful participation in education programs do not go untended. (The New York City Commission identifies as one element of high quality education programs "health, vision, hearing and dental screening and referral to direct health care"). In addition, such coordination should facilitate assistance to families with problems that pose barriers to successful education.

It might also be argued that a statute should make provision for the construction or renovation of facilities where suitable space is not otherwise available. But such a provision would have the potential of adding major costs to the program. And a school district with classroom shortages does have the option of contracting out.

It should be noted that this draft does not place limitations on the circumstances under which a district may contract with private agencies but rather provides for the establishment of standards that contractors must meet. Also, as noted previously, the draft is not geared to individual schools but to the obligation of the LEA, which would be free to establish programs at each school, establish child development centers that would serve several schools or make some other arrangement. The principal reason for this is that differentiating between schools for purposes of funding is not consistent with the idea of entitlement which is fundamental to the model statute.

A couple of final notes on this section. Several of the recent state statutes specify that the pre-school program will be one-half day in duration. In the District of Columbia, about 75% of the programs operate on a full-day schedule. The model statute adopts the formulation in the South Carolina Education Reform Act which provide that the program operate "at least half a day" (for 4-year-olds.).

There was some discussion of whether to add a subsection 3, mandating the establishment of all-day kindergarten as a logical step if half-day programs are to be created for 3- and 4-year-olds. While all-day kindergartens were generally viewed as desirable, they were not viewed as central to the purposes of the model statute. Concern was also expressed that in the competition for financial resources all-day kindergartens might be weighed against child development programs for 3- and 4-year olds, a need which is regarded as more pressing.

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[7]The Children's Defense Fund reported in 1986 that since 1983, 13 states have passed legislation authorizing some type of state pre-school appropriation or expanding an existing program. A perusal of state statutes that the Fund regards as the best (including Michigan, Massachusetts and Washington) reveals scant attention in the text of the laws to the content or objectives of pre-school programs. The Washington statute speaks of a program to assist eligible children "with educational, social, health, nutritional and cultural development to enhance their opportunity for success in the common school system." CDF, in identifying "crucial elements" of a high quality program, speaks of "providing an age-appropriate curriculum, as opposed to simply adjusting the kindergarten program downward."

PART III

ENTITLEMENT OF PUBLIC SCHOOL STUDENTS

A. **Definitions**

Suggested Language

"Terms requiring definitions, such as "student at-risk," "promising practices," and "environment for successful education," are defined in the succeeding sections of this Part in which the terms are used."

B. **Entitlement of Students**

Suggested Language

(1) *"Each student enrolled in a public school operated by a local education agency is entitled to be provided with educational and related services reasonably calculated to lead to successful completion of a high school education.*

(2) *Each LEA is responsible for identifying in a timely manner under the standards set forth in Section C of this Part students at-risk of not completing successfully their high school education (hereinafter referred to as "students at-risk").*

(3) *Each LEA is responsible for initiating for students identified as at-risk under Subsection C of this Part special measures to enable the students to realize the entitlement stated in B(1). Such special measures shall include:*

(a) *the adoption of promising educational practices (as further specified in Subsection D of this Part);*

(b) *the provision of access to a school environment in which successful education is taking place (as further specified in Subsection E of this Part); and*

(c) *the development of individual teaching and learning plans (ITLPs) geared to a student's educational needs and needs for related services and the development of school-wide plans designed to identify and redress systemic problems in a school (as further specified in Subsection F of this Part)."*

C. **Definition of At-Risk Students: Eligibility for Special Measures**

Suggested Language

(1) *"A student enrolled in kindergarten through third grade shall be deemed at-risk and eligible for special measures provided in this Part if:*

(a) *he or she is a member of a household or family whose income is at or below the poverty level under criteria used by the Bureau of the Census in compiling the most recent decennial census, or*

(b) *he or she has not made substantial progress in mastering basic skills that are appropriate for students of his or her age, or*

(c) *he or she has been determined to be at-risk by the school principal after consultation with the student's parent or guardian. The principal's determination shall be based on an assessment by school staff familiar with the student that he or she has health, social or family problems that are impairing the student's ability to succeed in school."*

(2) *"A student enrolled in grades four through twelve shall be deemed at-risk and eligible for special measures provided in this Part if:*

(a) 1) *in those states using statewide criterion-referenced examinations, he or she scores lower than the appropriate level of performance set by the state below which a student cannot be expected to progress adequately and complete high school successfully,*

2) *in those states using statewide norm-referenced examinations, he or she scores lower on the examination than a standard of performance established by the state. To establish the standard, the state shall first identify criteria of learning required to make adequate progress in schools and then shall review the content and difficulty of the examination to identify those aspects of the examination (such as subskills or objectives) and the level of performance that indicate that the criteria have been met,*

3) *in those states using statewide competency examinations for high school promotion or graduation, he or she fails the examination, or*

(b) *notwithstanding satisfactory performance on statewide examinations, he or she has failed to meet the school's standards for promotion and has been retained in grade for one or more years, or*

(c) *he or she has at any time been a school dropout or has had unexcused absences of 20 or more days during a calendar year, or*

(d) *he or she has been determined to be at-risk by the school principal after consultation with the student's parent or guardian. The principal's determination shall be based on an assessment by school staff familiar with the student that he or she has health, social or family problems that are impairing the student's ability to succeed in school. Such problems may include but are not limited to evidence of abuse of the student by a family member or the student's use of alcohol or drugs, pregnancy or parenthood, delinquent behavior, attempted suicide."*

Comment on Eligibility: The draft sets out a three-tier system for defining students at-risk with different eligibility standards for 3- and 4-year-olds, students from K to 3, and students from 4 to 12.

For pre-school students and those from K to 3, family poverty is a primary standard because it has been found to be a significant predictor of school failure. The family poverty criterion is dropped after grade 3 when there are more concrete manifestations of school failure to go on.[8]

A second major criterion is educational readiness or performance. This is expressed in different ways at each level. At age 3 and 4 it could be *"predicted"* deficiency in school *readiness"*, although, as noted, such a standard has problems and is not recommended. At the primary level, it is failure "to master basic skills" which may be evidenced by tests, grades, lack of promotion. After that, it is performance below a standard established by the state geared to successful completion of high school.

Substandard performance may be gauged in various ways depending on the types of statewide tests that are used. For criterion-referenced tests, the cut-off point would be the score below which a student is not expected to progress adequately and to complete high school successfully. For norm-referenced tests, the task of establishing a cut-off is somewhat more complex. It cannot be those students falling below the 50th or some other lower percentile because, if students are compared only with each other, a group that is fixed in number will always be deemed "at-risk." For example, if the definition of students "at-risk" is all those who score below the 33rd percentile on a particular test and 1/3 of the students by definition are below the 33rd percentile, then the number of "at-risk" students is fixed regardless of the success of school district efforts to improve skills.

Any tenable defintion must contemplate significant reductions in the number of at-risk students as the measures called for in the legislation take effect. Accordingly 2(a)(2) calls for states that use norm-referenced examinations to determine criteria for satisfactory performance and then to establish cut-off scores based on the criteria. As student performance improves, larger and larger numbers of students may be expected to exceed the cut-off score.

States may continue to use norm-referenced tests for a variety of purposes, but an external or absolute measure of performance will be employed to identify students "at-risk" and to gauge improvements.

In those few states, e.g., Ohio, which do not employ statewide examinations of any kind, identification of students at-risk because of substandard performance can be made through use of local standards. Apart from their performance on statewide tests, students may evidence a lack of satisfactory performance through classroom failure that results in retention in grade.

Although it is arguable that the criteria previously cited are sufficient, additional standards are employed, primarily on grounds that "at-risk" means a predictive (not just an extant) condition that there may be other reliable early-warning signs for students who have not yet experienced educational failure.

Thus, a third criterion employed for students at the grade 4 to 12 level is lack of participation — being dropouts or truants.

The fourth and final criterion is a discretionary determination made by the principal after consultation with parents or guardians that a child is at-risk because of "health, social or family problems." The difference at the 4-12 level is that several problems e.g., alcohol or drug involvement, pregnancy are identified as illustrative of the bases for a principal's determination.

This approach differs from one statute which lists parenthood and adjudicated delinquency as categorical conditions. This approach was not used for a couple of reasons. First, our aim is to develop a generic, partly

[8]Language deficiency is also subsumed in performance criteria after pre-school.

process-oriented approach to educational failure and to emphasize the notion of entitlement. To isolate and specify particular conditions could well lead to a series of categorical programs e.g., ("dropout prevention," "pregnancy prevention") which, while useful, would not satisfy the real needs. Further, no laundry list of conditions could be exhaustive. Some states focus on deviant behavior by students. Yet other conditions (e.g., family tragedy or break-up or child abuse) may put a student at-risk without the student having yet actually failed or engaged in deviant behavior. The system for identifying students ought to be flexible enough to take that into account. This is done by giving discretionary authority to the principal. At the same time, the process gives responsibility to teachers, counselors, and the principal to identify the individual conditions of students, which is consistent with other overall approaches in the statute.

D. **Promising Practices**

Suggested Language

"In implementing the duties specified in III B(3)(a), each LEA shall assure that its practices and programs include the following:

(1) *appropriately certified and trained staff;*
(2) *the adoption of systematic instructional strategies which:*
   (a) *have been demonstrated to be effective or which show promise of being effective,*
   (b) *are designed to assist at-risk children in mastering the same skills and knowledge expected for all students, and*
   (c) *are designed to assure coordination and integration of programs to assist at-risk children with the entire education program;*
(3) *the use of appropriate and up-to-date textbooks, materials and equipment;*
(4) *the conduct of education programs in facilities that are clean and safe;*
(5) *the involvement of parents or other primary care givers in all facets of their child's education;*
(6) *a system of school-based administration which encourages goal setting at each school and affords scope for innovation within the broad limits of policies established by the LEA."*

Comments on Promising Practices: The purpose of this section is to identify the basic components of an effective education program. In other words, the effort is to describe elements of a program the presence of which in public schools, almost all educators agree, is important to the ability of students to complete successfully their high school education.

While some may say that the six components described above are so basic that they are not appropriately characterized as "special measures" in III B(3), there is widespread evidence that in public schools throughout the nation attended by large numbers of at-risk children, one or more of these elements of an effective education program is lacking. Accordingly, what is "special" about these measures is the effort to assure their implementation by stating them in the form of an entitlement capable of enforcement.

Further, it is contemplated that additional content will be given to the Section through the adoption by SEAs of guidelines or policy statements on what constitute promising practices. What follows is merely illustrative of ways in which SEAs may choose to flesh out the requirement that promising practices be adopted.

(1) *appropriately certified and trained staff.* The SEA may identify the elements of a comprehensive personnel development program including in-service training of instructional and support personnel. It may seek to deal with the problems created by disproportionate use of uncertificated or substitute teachers at schools with large numbers of at-risk students.
(2) *the adoption of systematic instructional strategies.* The use of the term "systematic instructional strategies" is intended to emphasize the importance of planned rather than *ad hoc* instruction methods. Planning is contemplated not only at the district level but at each school, through the leadership of principals and groups of teachers who have the authority and responsibility to initiate and maintain school improvements.

   Guidelines may emphasize the consensus among educators that teachers' holding and communicating high expectations for student learning has been key to improving the achievement levels of at-risk students. Other matters which may be addressed include the establishment of learning sequences in which each step is mastered without arbitrary time limits before moving on to the next, the establishment of pupil-teacher ratios which permit more attention to the needs of at-risk students, the adoption

of cooperative learning strategies, the use of peer tutoring.

Subsection 2(b) underlines the importance of high teacher expectations by establishing the standard that at-risk children are expected to master the same skills and knowledge as children who are not deemed to be at-risk. Those should include skills of comprehension, analysis, problem solving and decision making.

Subsection 2(c) is intended to make clear the importanc of strategies which avoid the isolation within the schools of children deemed to be at-risk. Section E of this part ("Environment for Successful Education") *infra*, is based upon research demonstrating that at-risk children benefit from attending *schools* at which a large proportion of the student body is performing satisfactorily. These benefits are lost if children deemed to be at-risk are separated from others in *classrooms* for substantial parts of the school day.

It should be emphasized, however, that the aim of this subsection is not to dictate or to impel SEAs to dictate the adoption of a particular methodology. Rather, state legislatures would be calling upon state or local agencies to engage in a continuing quest for instructional strategies that produce success for at-risk students, being flexible and adaptable enough to make needed changes and resolute enough to assure that methodologies that do work are extended to the largest number of children.

(3) *the use of appropriate and up-to-date textbooks.* This subsection is intended to deal with problems of out-of-date textbooks, materials, supplies and equipment (such as computers) that often affect disproportionately schools with large numbers of at-risk children. Texts that are "appropriate" as well as up-to-date take into account the rich cultural diversity of the nation and relate curriculum to the material on which students are tested.

(4) . . . *facilities that are clean and safe.* Safety in this subsection refers both to the establishment of conditions free from environmental or health hazards (e.g., asbestos, lead-based paint) and to conditions of physical security in which school officials have taken all reasonable steps to guard students and staff against assault.

(5) *the involvement of parents* . . . This subsection draws on the considerable body of research and experience demonstrating that the interest and involvement of parents is a key factor in the educational success of their children. Again, the intent is not to mandate a specific set of practices. Rather it reflects the growing understanding that failure of school systems to involve and consult parents, like unqualified teachers, inadequate texts and unsafe facilities, is a barrier to effective education. SEAs may encourage LEAs to regard involvement of parents as itself an effective teaching practice and to plan systematic efforts to bring parents into the process of teaching their children.

(6) *a system of school based administration* . . . As educators increasingly have noted, permitting flexibility at the school level in developing the means for implementing broad state and local policies is an important element in any overall strategy to improve opportunity for at-risk students (see e.g., Graham, "Achievement for At-Risk Students" pp. 30-31; a paper prepared for the Council of Chief State School Officers, July 1987).

Finally, it should be noted that in various contexts, federal courts have given some content to requirements of the use of "promising practices" that are explicit or implicit in federal statutes such as the Education of All Handicapped Children Act and the Bilingual Education Act.[9] Here, however, the hope is that content will be provided principally through policies and guidelines adopted by SEAs and the positive response of LEAs.

E. Environment For Successful Education

Suggested Language

"1. *For purposes of implementing the duties specified in III B(3)(b) an LEA shall be deemed not to be providing a school environment in which successful education is taking place at any school in which more than 25 percent of the students enrolled in grades K through 3 are not making substantial progress in mastering basic skills as defined in III C(1)(b) or in which more than 25 percent of the students enrolled*

[9]As to the Education of All Handicapped Children Act, *See*, e.g., Campbell v. Talledega County Board of Education, 518 F. Supp. 47 (N.D. Ala. 1981); Roncker v. Walter, 700 F.2d 1058 (6th Cir. 1983), *cert. denied*, 104 S. Ct. 196 (1983). As to the Bilingual Education Act, see Castenada v. Pickard, 648 F.2s 989, 1009-1010 (1981).

in grades 4 through 12 are not meeting the appropriate levels of performance as defined in III C(2)(a) and (b).

2. *No later than two years from the effective date of this Act, each LEA shall provide an environment in which successful education is taking place, as defined in (1) above, at all schools within its jurisdiction, provided, however, that a school shall not be deemed to be out of compliance if, notwithstanding its failure to meet the 25 percent criterion, it has reduced by at least 10 percent the proportion of students whose performance failed to meet standards during the two-year period and if it continues to reduce the proportion by at least 5 percent in each succeeding year.*
3. *Notwithstanding the provisions of subsections 1 and 2 in this section, no school shall be deemed to be providing an environment in which successful education is taking place if after the effective date of this Act the completion rate for the school decreases by more than three percent in any two-year period.*
4. *Two years from the effective date of this Act, each at-risk student who is attending a school which is not providing an environment for successful education as defined in subsections 1 and 2 shall be entitled to transfer to a school at which such an environment is being provided. The right of transfer shall apply to schools within the jurisdiction of the LEA offering the appropriate level of education. To the extent that the rights of students to transfer to schools providing environments for successful education cannot be effectuated fully because more than 25 percent of students in the district as a whole are not meeting the standards described in 1 and 2 the SEA shall make arrangements for inter-district transfers similar to those which provide for inter-district cooperation under other provisions of state law.*
5. *Each student who transfers to a school providing an environment for successful education under the provisions of subsection 4 shall be entitled to complete his or her education through the highest grade of that school. Each transfer student whose residence is so distant from the transfer school as to call for free transportation under state or local policy shall be provided with such transportation.*
6. *Each LEA shall take appropriate steps, including the allocation of additional resources, to assure that schools that receive student transfers under subsection 3 above continue to be schools which provide an environment for successful education."*

Comments on Environment for Successful Education: This section is intended primarily to furnish meaningful options to students whose schools are not providing environments conducive to learning.

The standard chosen for defining schools with successful learning environments — the proportion of children who are making satisfactory academic progress — is based on the extensive research which demonstrates that at-risk children benefit from attending schools at which a large proportion of the student body is performing satisfactorily. The 25 percent criterion is used as a minimum standard, taking into account that in some districts the percentage of students not making adequate academic progress is so large that attainment of a higher standard within a two-year period may not be realistic. Additional flexibility is built into the standard by treating schools which do not meet the 25 percent criterion as in compliance as long as they make steady progress (at the rate of at least 5 percent a year) toward that goal. States are encouraged, however, to set a higher standard where such a standard is attainable by the districts within their jurisdictions.

Subsection 3 provides that a school that would otherwise be considered to be furnishing a successful learning environment will lose that status if it has a significant increase in its dropout rate. While the dropout rate at such a school may be expected to increase somewhat with the transfer of at-risk children, limits should be set on such an increase. Further, the establishment of criteria related to completion rates will guard against schools achieving or preserving their status as "successful schools" by encouraging students who are not making satisfactory progress to drop out.

The right of transfer under subsection 4 would take effect only after LEAs have had a two-year grace period in which to bring schools into compliance. The primary right would be to transfer to another school designated by the LEA within its jurisdiction which meets the standard of providing an environment for successful education. Where, however, the entitlement cannot be effectuated fully within the district, subsection 3 calls upon the SEA to provide for inter-district transfers. The arrangements for such transfers could be similar to provisions that most states have for inter-district cooperation for a variety of purposes, e.g., meeting the needs of children with certain special education needs. This aspect of the statute is similar to Colorado's "second chance" program which permits high school students who have not succeeded to transfer to other districts to participate in programs geared to their needs. Other states which have relevant laws providing choices for students include Arizona, Massachusetts, Oregon, Vermont, and Wisconsin. See *A Time for Results,* National Governors' Association (1986) pp 76-78.

Finally, subsection 6 is designed to guard against the danger that schools that are providing environments for successful education may lose that status with the transfer of large numbers of at-risk students. Obviously, an LEA would not be free to permit so many transfers as would place the receiving school in statutory non-compliance. Beyond this, however, the section calls upon the LEA to allocate additional resources to receiving schools so that they will be able to meet the needs of transferring students and continue to provide an environment for the successful education of all students. Such resources may for example, include additional counselors and reading specialists.

F. **Individual Teaching and Learning and School-Wide Plans**

Suggested Language

"For purposes of implementing the duties specified in Section B(3)(c) of this part:

1. *Individualized Teaching and Learning Plan. Two years after the effective date of this Act:*
   (a) *The principal of each school which meets the criteria for providing an environment for successful education specified in Section E of this Part shall arrange for the preparation of an individual teaching and learning plan (ITLP) for all students enrolled in the school who are determined to be at-risk under Section C(2) of the Part.*
   (b) *The principal of each school which fails to meet the criteria for providing an environment for successful education specified in Section E of this Part shall arrange for the preparation of an ITLP for all students enrolled in the school who are determined to be at-risk under Section C(2) of this Part whose parents or other primary care givers request the preparation of an ITLP.*
   (c) *ITLPs developed under subsections (a) or (b) of this section shall be prepared in consultation with the student's parents or other primary care givers and shall contain the following:*
      (1) *An assessment of the current educational performance of the student and of the aspects of that performance that place the student at-risk;*
      (2) *a brief description of the instructional strategies and educational services that will be implemented to improve the performance of the student; and*
      (3) *an identification of related health, nutritional or other social services needed by the student and of the agency or agencies to which the student is being referred for the provision of such services."*
   (d) *The principal of the school in which the student is enrolled shall designate a teacher or other staff member to review annually with the student and his parents the progress being made by the student and to make any necessary adjustments in the ITLP. When the student is determined to be no longer at-risk under III C(2), the ITLP shall be kept on file, but no further adjustments need be made."*
2. *"School-wide plans. Two years after the effective date of this Act, the principal of each school which fails to meet the criteria for providing an environment for successful education specified in Section E of this Part shall arrange for the preparation of a school-wide plan ("plan"). The plan shall be prepared after consultation with teachers, other school staff and parents. The plan shall identify the promising practices adopted by the LEA under Section D of this Part and detail the means used to implement these practices in the school. Further it shall evaluate progress made in implementing promising practice, identify deficiencies in the means employed and specify changes that will be adopted to secure greater progress in the future. A copy of the plan shall be transmitted to the LEA with any requests for additional support or technical assistance needed to implement the goals contained in the plan. Copies of the plan shall also be made available to teachers, other staff and parents (or other primary care givers) of children enrolled in the school."*

Comments on Individual Teaching and School-wide Plans: The purpose of the ITLP is to establish a progress which will impel attention by school officials to the specific individual needs of students who have been determined to be at-risk. It should be emphasized that the process is not intended to be bureaucratic or unduly burdensome to any of the participants. Rather, it is to assure that the relevant questions will be asked about why an individual student is at-risk and what practical measures may be adopted to improve the student's performance. If ITLPs turn out to be documents which employ boilerplate language and which occupy the time of school staff to no productive end, the purpose of this section will have been defeated.

Subsection (c)(3) reflects an awareness that not infrequently important causes of educational failure lie out-

side the school system and go undetected for lengthy periods of time. Among these causes are physical and mental health problems and nutritional deficiencies. The subsection does not make school systems responsible for correcting such problems but does require a good faith effort to identify needs for services that are related to education and to refer students to health and social agencies which may meet the needs. Such services may range from the provision of eyeglasses to a visually impaired child to an adult mentor for a child who is in need of such support.

It should be noted that ITLPs are treated differently at schools deemed to be furnishing an environment for successful education (i.e. schools where 75 percent or more of the children are making satisfactory progress) and those which are not furnishing such an environment. In the former, principals are directed to prepare ITLPs for all at-risk students while in the latter, ITLPs are to be prepared only for at-risk students whose parents request them. The reasons for this differential treatment are both pragmatic and substantive. Clearly, the administrative and other burdens involved in the development of such plans will be less onerous at schools where a small proportion of students is not making satisfactory academic progress than at schools where the proportion is greater. In addition, while attention to the individual needs of students is needed in all cases, it is fair to assume that in schools where the success rate is very low, greater priority should be given to identifying and correcting systemic problems in the school's education program.

Accordingly, subsection 2 calls upon the principals of schools which, after two years of effort are not providing an environment for successful education, to prepare a school-wide plan. These plans are intended to impel a self-diagnosis or evaluation of where the barriers lie in individual schools to implementation of the promising practices that the LEA has adopted. The plans should be drawn with the participation of parents, teachers and other staff and should result in concrete measures to improve teaching practices and other conditions important to the success of at-risk children.

PART IV

ENTITLEMENT OF YOUNG PEOPLE NOT IN SCHOOL

A. **Entitlement**

Suggested Language

"Every person who:
(1) has reached the age where school attendance is no longer required but is under the age of 21; and
(2) has not successfully completed high school but is no longer enrolled in school
shall be entitled to re-enroll in the public schools of the system where he or she resides or in an alternative program established pursuant to Section C of this Part."

B. **Duties of LEA**

Suggested Language

1. *"Each LEA shall be responsible for designing an educational program appropriate to the needs of persons who are no longer enrolled in school but are eligible for re-enrollment under Section A of this Part."*
2. *"Each LEA shall be responsible for establishing an affirmative outreach program designed to inform persons who are no longer in school but who are eligible for re-enrollment under Section A of this Part of the opportunities for re-enrollment. The outreach program shall include reasonable efforts to locate and inform eligible persons of opportunities for re-enrollment, e.g., through mailings sent to them at the last address listed for them in public school records."*

C. **Duties of State Government and SEA**

Suggested Language

1. *"The SEA shall establish guidelines on the content and structure of educational programs appropriate to the needs of persons eligible for re-enrollment under Section A of this Part."*
2. *"The SEA shall make available technical assistance to aid in the establishment of alternative schools or programs for persons eligible for re-enrollment under Section A of this Part."*
3. *"The State shall make such revisions in its funding formula as are necessary to assure reimbursement to LEAs or to other entities of costs of educating students who re-enroll in school pursuant to the provisions of this Part."*

Comment on Entitlement of Young People Not In School: This Part is responsive to the growing awareness of the need for special attention to young people who have dropped out of school and are widely deemed to be beyond the purview or responsibility of public school systems because they have reached the age where compulsory attendance laws no longer apply.

Section A establishes the right of such students to reenroll in public school systems until they reach the age of 21. Sections B an C set out duties of the LEA and the SEA to design and implement educational programs which are geared to the needs of these older students. Such programs may differ from those offered in other school programs in a variety of ways. They may, for example, give significant attention to school-to-work transition including skills and learning behaviors needed to function in the work place. They may combine work with education and seek to develop assurances of employment opportunities to students who successfully complete the program. They may call upon the resources and participation of the business community in public-private partnerships. They may call for the establishment of classrooms and learning environments that are smaller in size than those of other programs. See *Time for Results*, p. 110.

SEAs should have responsibility for providing guidance in the establishment of such programs and should be free to draw on research and evolving experience in doing so. Participation in programs that prove successful obviously may be made available not only to persons who re-enroll but to others who are in peril of dropping out of school.

Section C also calls for revision of state funding formulas where needed to provide reimbursement for re-enrolling students. Many state formulas do provide for students up to the age of 21. For those that do not, the state share of educational costs for these older re-enrolling students should probably be not less than the portion assumed for younger students.

PART V

IMPLEMENTATION AND ENFORCEMENT

A. **Monitoring and Evaluation**

Suggested Language

1. *"The SEA shall develop a system for collecting from each LEA the statistical and other information needed to evaluate compliance with this Act."*
2. *"Each LEA shall submit to the SEA annually a report on its progress in meeting the requirements of this Act. The report shall include a description of the promising practices being implemented under Section III D, an identification of schools that do not meet the standards for providing an environment for successful education specified in Section III E and such other information as the SEA shall request under subsection (1) above."*
3. *"The SEA shall conduct periodic on-site reviews of LEAs to determine their progress in meeting the requirements of this Act. Priority in scheduling such reviews shall be given to LEAs which, on the basis of the reports submitted under Subsection (2) or other information received by the SEA, appear to have serious problems of noncompliance. The SEA shall conduct on-site reviews of all districts at least once within three years from the enactment of this Act."*

Comments on Monitoring and Evaluation: As with many laws, successful implementation of this statute will depend in large measure on the development of good information systems and of a review process that will encourage and assist compliance without the necessity of resorting to adversary proceedings before courts or administrative agencies.

The information needed by the SEA will include achievement data, information on student enrollment, teacher qualifications, textbooks, physical facilities, the instructional strategies being pursued by LEAs. Before implementing a system of data collection and reports, however, the SEA should conduct a careful review to assure that no more information is being requested than is needed to assist compliance with the prime purposes of the Act and that the information is being requested in a form that will be least burdensome to the LEA.

The section also calls for a series of self-initiated on-site compliance reviews by the SEA, with priority given to those LEAs which appear to be having the most serious problems of compliance.

B. **Funding and Technical Assistance**

Suggested Language

1. *"There are hereby authorized to be appropriated such sums as necessary to carry out the purposes of this Act."*
2. *"The SEA shall make available to LEAs and to other entities and individuals having duties under the Act technical assistance which will aid in the performance of their responsibilities."*

Comments on Funding and Technical Assistance: Although many of the steps called for in the model statute can be accomplished without additional financial resources, clearly a significant increase in funding will be required. Each state will make its own assessment of new financial needs and of how existing resources can be redirected to provide more effective assistance to at-risk children.

Initial funding will be based on the number of at-risk children in each LEA. Subsequent funding will be in the form of incentives and rewards for making measurable progress.

It is not anticipated that funding for categorical purposes will be encouraged, except perhaps for areas, e.g., professional staff development and in-service training, that are recognized as essential to the success of the entire program.

C. **Duties of State Department and Agencies**

Suggested Language

1. *"Every state department agency that is responsible for providing or regulating related services specified*

in Part III, Sections B and F(1)(c) or that provides or regulates other services needed to assure accomplishment of the purposes of this Act shall cooperate with the SEA in the implementation of this Act."

2. *"In the event that the SEA concludes that a state department or agency is not providing the cooperation required by Section C(1) it shall, after making diligent efforts to secure such cooperation, notify the Governor of this fact. The Governor after conducting such investigation as he or she deems necessary shall take appropriate action to secure compliance with the duties specified in this section."*

Comments on Duties of State Departments and Agencies: This section recognizes the importance of some services provided by non-education government departments and agencies to the accomplishment of the purpose of the model statute.

For example, Section F(1)(c) of Part III calls for an identification in individual teaching and learning plans of related health, nutritional or other social services needed by at-risk students and referral to appropriate agencies that provide such services. Section C(1)(f) of Part II requires the SEA to set standards governing the implementation of child development programs for 3- and 4-year-olds that include "coordination with other public and private human service agencies to assure diagnosis and treatment of conditions that place children at risk of school failure." For these provisions to be effective, the cooperation and assistance of government agencies concerned with health, nutritional and other social services is clearly needed.

In addition, Part IV calls for the establishment of education programs appropriate to the needs of students age 16 through 20 who re-enroll in school. Such programs will include attention to school-to-work transition and may combine education with job opportunities. Clearly cooperation and coordination with state and local employment service agencies will be needed.

Accordingly, this Section sets out a duty of cooperation by such non-education agencies and provides for intervention by the Governor if needed to redress failures of coordination or cooperation.

D. **Enforcement**

Suggested Language

Private Party Complaints

1. *"Any person aggrieved by the failure of the LEA to comply with any provision of Parts II or III of this statute may file a written complaint with the SEA. A complaint may also be filed by a third party on behalf of a class of students aggrieved by failure of the LEA to comply with provisions of Parts II or III."*
2. *"Such complaints shall be handled in an expeditious manner through the administrative process ordinarily used by the SEA to resolve controversies between individuals and LEAs. SEAs are encouraged to make use of alternative processes of dispute resolution provided that such processes hold reasonable promise of expediting rather than delaying ultimate resolution of the complaint."*
3. *"Complainants shall be entitled to the assistance of a lawyer or other legal representative in the administrative proceeding."*
4. *"Any complainant who receives an adverse determination by the final reviewing authority within the SEA or who fails to receive any final determination within 270 days after having filed the complaint, may file an action in the court of civil jurisdiction designated by state law for review of administrative action by the SEA. The proceedings to be followed including appeals shall be those specified in state law."*
5. *"A prevailing plaintiff in a proceeding commenced under this section shall be entitled to such civil relief as the SEA or court deems just under the circumstances, provided, however, that no award of monetary damages shall be available under this Act. Relief available under this Act includes, but it not limited to orders requiring an LEA to adopt specific practices under Part III Section D, requiring the transfer of students to schools providing an environment for successful education under Part III Section E, and requiring an LEA to observe the procedural requirements contained in Part III Section F. Prevailing plaintiffs shall also be entitled to awards of costs and reasonable attorneys fees."*

Comments on Private Party Complaints: This subsection is designed to make available the processes of state law usually employed for the resolution of controversies concerning public schools to effectuate the guarantees of the model statute.

The draft calls for the exhaustion of administrative remedies provided for in the SEA before the filing of a court suit is permitted. A time limit of 9 months (270 days) is specified, however, for SEA agency action, after

which time a complaint may file a court action. This is in line with a number of federal statutes designed to prevent undue delay in administrative proceedings.

The draft encourages use of alternative forms of dispute resolution such as informal mediation or conciliation. Third party actions on behalf of a class are permitted.

Court action, too, will be in those state forums usually available for adjudicating controversies concerning the public schools.

The remedies obtainable are equitable in nature, i.e., orders to require the implementation of the special measures set forth in the statute to afford students the opportunity to emerge from at-risk status and to complete high school successfully. The remedies may include the mandating of expenditures of resources by LEAs or SEAs to accomplish the purposes of the Act. It is not contemplated, however, that damage awards would be available for failure of a student to become functionally literate.

E. SEA Enforcement

Suggested Language

1. *"Where a compliance review undertaken under V A(3) reveals noncompliance by an LEA with provisions of this Act, the LEA shall submit to the SEA a plan for corrective action with a schedule for completing such action. The plan may include changes in the educational leadership at individual schools, systemic changes in practices with the LEA, or other measures. The SEA may require modifications in the substantive provisions or schedule for completion of the plan."*
2. *"Where an LEA fails materially to fulfill the requirements of a plan for corrective action described in subsection (a) above or fails to carry out orders issued by the SEA under Section (1), the SEA shall take such additional action as is necessary to secure compliance with this Act. Such additional action may include a change in the governance of the LEA, which may be accomplished by the appointment of a monitor to oversee the operations of the LEA or by a declaration by the state superintendent of a vacancy in the position of the superintendent of the noncomplying LEA and appointment of an interim replacement, or by the reorganization of the noncomplying LEA through annexation by an adjacent district or other means."*

Comments on SEA Enforcement: These final provisions are designed to give state agencies both the authority and responsibility to take strong enforcement steps in cases of egregious noncompliance.

The provisions are modeled after those of several states which authorize forms of state trusteeship or reorganization in districts where major educational deficiencies persist. The draft provides a range and choice of remedies including annexation (see e.g., the Arkansas and Illinois Acts), replacement of officials (see e.g., the South Carolina Education Improvement Act), the appointment of a monitor (see, e.g., the New Jersey Act). Other relevant state statutes include those in Georgia, Kentucky, New Mexico, Ohio, Texas. Some of these statutes (e.g., Illinois) date back twenty years or more as do statutes in several states which provide for state takeovers of districts which are fiscally distressed. Experience with actual implementation of these measures (or with their success as deterrents) is limited. Accordingly, the draft suggests a range, with a choice to be made by the state legislature (or by the Governor or SEA through delegation by the state legislature) based on what appears to be most appropriate or successful for that state.

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